



PATENT APPLICATION

IN THE U.S. PATENT AND TRADEMARK OFFICE

April 13, 2005

Applicants: Satoshi MIKAMI et al

For: SKIN CONTACTING ARTICLE

Serial No.: 09/341 328 Group: 1615

Confirmation No.: 4999

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International Application No.: PCT/JP98/00080

International Filing Date: January 13, 1998

Atty. Docket No.: Kinoshita Case 209

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REPLY BRIEF UNDER 37 CFR 41.41**

Sir:

This reply brief is filed pursuant to the provisions of 37 CFR 41.41 in response to the Supplemental Examiner's Answer dated February 11, 2005.

(Please see following pages.)

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**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, DC 20231 on April 13, 2005.

  
Terryence F. Chapman

In the Supplemental Examiner's Answer, the Examiner states that the brief does not contain a statement identifying the related appeals and interferences. On the second page of the Supplemental Appellant's Brief on Appeal, under the heading of "RELATED APPEALS AND INTERFERENCES", it is stated that there are no related appeals and interferences to the present application. As such, Appellants disagree with the Examiner's position that the Supplemental Appeal Brief does not contain such a statement.

In the Supplemental Examiner's Answer, the Examiner has taken the position that since the Mellul's et al reference discloses a cosmetic composition for skin which can be applied by an applicator and which can contain inorganic and organic pigments, the term organic pigments can be interpreted to mean natural pigments and thus read on the present invention. Appellants wish to point out that all organic pigments are not necessarily natural pigments and, furthermore, the present invention requires the presence of a natural organic impalpable powder. Nothing in Mellul et al suggests that the cosmetic compositions disclosed there contain natural organic impalpable powder as required by the claims on appeal, contrary to the position of the Examiner.

Both the Mellul et al and Lagrange et al references disclose cosmetic compositions which can be applied to the skin through the use of applicators. By the very nature of the cosmetic compositions of the references cited by the Examiner, they cannot be "firmly adhered" to the applicator. The Examiner states in the Supplemental Examiner's Answer that the term "firmly adhered" is relative and therefore can read on make-up products which are contained on an applicator before they are applied to the user. However, Appellants wish to point out that terms in patent claims must be given their "accustomed", "ordinary", or dictionary meaning unless the application disclosure points to another meaning. It is well settled that the definition of "firmly" is "securely or solidly fixed in place" and the definition of "adhered" is "to

hold fast or stick by or as if by gluing, suction, grasping, or fusing". The present specification is in accordance with these definitions. As such, one of ordinary skill in the art would interpret the claims on appeal as stating that the natural organic impalpable powder is permanently affixed to a side of the base layer of the skin-contacting article. As such, Appellants respectfully submit that there is no basis for the Examiner's position that the powder cosmetic compositions of Mellul et al and Lagrange et al read on the currently presented claims. Such an interpretation would in fact destroy the objects of these references since the cosmetic powder disclosed there is to be applied to the user.

Reversal of the Examiner's rejection of the currently presented claims is respectfully solicited.

Respectfully submitted,

IN TRIPPLICATE

  
Terryence F. Chapman

TFC/smd

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